



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

H.B. NO. 1659, RELATING TO SEARCH WARRANTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 9, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

This bill would provide that a person or entity authorized by the court, who is not a law enforcement officer, could assist law enforcement with the execution of search warrants in the State of Hawaii or authorized by Hawaii courts.

Currently, sections 803-31 through 803-37 of the Hawaii Revised Statutes require that a search warrant be executed by a law enforcement officer. In other words, current law requires that a law enforcement officer conduct the search and seizure that was authorized by the court. However, in many cases involving electronic evidence, law enforcement is unable to execute the warrant without specialized assistance from non-law enforcement personnel. For example, there are currently no law enforcement officers in the State capable of executing a search warrant on a computer server, a computer mainframe, or encrypted devices. In order to execute such warrants, law enforcement must rely on specialized assistance from non-law enforcement personnel, typically those with an Information Technology background.

In addition, in cases that involve a search warrant directed to service providers, such as Google, Microsoft, Yahoo, Verizon, etc., law enforcement officers do not access company premises or company computers. Rather, it is company personnel that execute the search warrant by accessing their computer systems and seizing the electronic evidence authorized by the warrant. It would be impractical for law enforcement officers to enter the premises of a service provider and to start searching through their electronic records systems. Besides being disruptive to the operations of the company, law enforcement simply does not have the technical

knowledge or training to execute a search involving the vast computer networks of service providers. It is more practical that company personnel conduct the search in accordance with the court's search warrant.

Lastly, more and more, law enforcement is encountering scenarios where they do not have the technical skill to execute a search warrant on encrypted devices. For example, right now, there is no law enforcement officer in the State with the technical knowledge, skill, or training to execute a search warrant on an encrypted, passcode-protected device that runs the latest operating system. Law enforcement must rely on specialized assistance from forensic IT personnel located in other States.

The purpose of this bill is to amend parts of sections 803-31 to 803-37 to authorize a judge to permit law enforcement to obtain specialized assistance from non-law enforcement persons, with the execution of a search warrant. This bill will not require or mandate that a judge permit such assistance. Rather, it gives the judge the *discretion* to permit assistance. In addition, the judge remains free to set limitations on the manner in which such assistance is provided.

For the foregoing reasons, the Department of the Attorney General supports the passage of this bill.

LATE



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 9, 2016, 2:00 PM
State Capitol, Conference Room 325

WRITTEN TESTIMONY ONLY

By
Judge Barbara P. Richardson
Deputy Chief Judge
District Court, First Circuit

Bill No. and Title: House Bill No. 1659 Relating to Search Warrants.

Purpose: Allows courts to authorize a person or entity, other than an officer of justice, to carry out a search warrant. Allows courts to authorize an officer to obtain technical assistance if the search warrant granted pertains to an electronic device or storage media.

Judiciary's Position:

The Judiciary takes no position on House Bill 1659 and respectfully offers the following comments.

It is understandable that law enforcement may need technical expertise and assistance in executing a search warrant, particularly where the search relates to “electronic devices or storage media.” The proposed amendment in HB 1659 can be read to mean that “a person or entity authorized by the court to assist the officer” could be directed to execute a search warrant without the presence of a law enforcement officer. This may not be what is intended.

The bill would require a judge to decide if the selected “person or entity” is capable of performing the search or assisting a law enforcement officer in the execution of a search warrant. The courts do not have the regulatory power or the knowledge, staff and resources to determine what persons or entities are capable of executing a search warrant or assisting, and therefore “authorized” to assist, a law enforcement officer in executing a search warrant.



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House Committee on Judiciary
Tuesday, February 9, 2016 2:00 PM
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Thank you for the opportunity to comment on House Bill No. 1659.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i

February 9, 2016

RE: H.B. 1659; RELATING TO SEARCH WARRANTS.

Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in strong support of H.B. 1659. This bill is part of the Department's 2016 legislative package.

The purpose of H.B. 1659 is to amend parts of HRS Section 803-31 to 803-37 to authorize a judge to permit law enforcement to obtain specialized assistance with the execution of a search warrant.

Currently, Sections 803-31 through 803-37 of the Hawaii Revised Statutes ("HRS") require that a search warrant be executed by a law enforcement officer. In other words, current law requires that a law enforcement officer conduct the search and seizure that was authorized by the court. However, in many cases involving electronic evidence, law enforcement is unable to execute the warrant without specialized assistance from non-law enforcement personnel. For example, there are currently no law enforcement officers in the State capable of executing a search warrant on a computer server, a computer mainframe, or encrypted devices. In order to execute such warrants, law enforcement must rely on specialized assistance from non-law enforcement personnel, typically those with an Information Technology background.

In addition, in cases that involve a search warrant directed to service providers, such as Google, Microsoft, Yahoo, Verizon, etc., law enforcement officers do not access company premises or company computers. Rather, it is company personnel that execute the search warrant by accessing their computer systems and seizing the electronic evidence authorized by the warrant. It would be impractical for law enforcement officers to enter the premises of a service provider and to start searching through their electronic records systems. Besides being disruptive to the operations of the company, law enforcement simply doesn't have the technical knowledge or training to execute a search involving the vast computer networks of services

providers. It is more practical that a company personnel conduct the search in accordance with the court's search warrant.

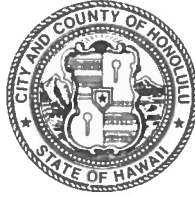
Lastly, law enforcement is encountering more and more scenarios where they don't have the technical skill to execute a search warrant on encrypted devices. For example, right now, there is no law enforcement officer in the State with the technical knowledge, skill, or training to execute a search warrant on an encrypted, passcode-protected device that runs the latest operating system. Law enforcement must rely on specialized assistance from forensic IT personnel located in other States.

It is also important to note that H.B. 1659 will not require or mandate that a judge permit such assistance. Rather, it gives the judge the *discretion* to permit assistance. In addition, the judge remains free to set limitations on the manner in which such assistance is provided.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 1659. Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE

JM-NTK

February 9, 2016

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 1659, Relating to Search Warrants

I am John McCarthy, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department supports House Bill No. 1659, Relating to Search Warrants.

Currently, Sections 831-31 through 831-37 of the Hawaii Revised Statutes require that search warrants be executed only by a law enforcement officer. The Honolulu Police Department cannot always execute a search warrant without the assistance of another person or entity.

This often occurs when the evidence involves electronic devices (cellular telephones and computers) or storage media (hard drives and other digital electronic devices) that cannot be searched without the expertise and equipment that only other persons or entities outside law enforcement can provide. Those persons and entities are sometimes outside of Hawaii.

The world of technology is a very dynamic one that is constantly changing. More and more often, we are encountering situations in which we do not have the technical skills to properly execute the search warrant. An example of this would be encrypted devices using the latest technology. In such cases, we are not capable of defeating the encryption or pass codes and must seek outside help.


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The passage of House Bill No. 1659 would give law enforcement the authority to seek the assistance they need from persons or entities outside of law enforcement as needed.

The Honolulu Police Department urges you to support House Bill No. 1659, Relating to Search Warrants.

Thank you for the opportunity to testify.

Sincerely,


~~for~~ (John D. McCarthy, Captain
Criminal Investigation Division

APPROVED:



Louis M. Kealoha
Chief of Police

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 6:57 PM
To: JUDtestimony
Cc: refrey2001@yahoo.com
Subject: *Submitted testimony for HB1659 on Feb 9, 2016 14:00PM*

HB1659

Submitted on: 2/9/2016

Testimony for JUD on Feb 9, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Frey	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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